

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYROSH BROWN,

Plaintiff,

v.

CASE NO. 1:13-CV-964

HON. ROBERT J. JONKER

CITY OF GRAND RAPIDS, *et al.*,

Defendants.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 87); Plaintiff's Objections to the Report and Recommendation (ECF No. 88); and Defendants' Response to Objection (ECF No. 89). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

Report and Recommendation itself; Plaintiff's objections; and Defendants' Response. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends granting Defendants' Motion for Summary Judgment (ECF No. 59). In his objections, Plaintiff claims the motion was not served on him, and he expresses disagreement with the Magistrate Judge's legal analysis. In their response, Defendants further bolster their position and directly address the claim of lack of service. The record reflects that the defense motion papers were served by mail on Plaintiff at both the address he had on file at the time of the motion's filing, and the later address he reported shortly after the filing. He had a full opportunity to respond to the motion and simply failed to do so. Moreover, even in filing an objection to the Report and Recommendation, he provided no substantive critique of the Magistrate Judge's analysis of the facts or law. Nothing in Plaintiff's Objections changes the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that Defendants are entitled to the relief they seek, for the very reasons the Report and Recommendation delineates.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 87) is approved and adopted as the opinion of the Court.
2. Defendant's Motion for Summary Judgment (ECF No. 59) is **GRANTED**.
3. For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wigginsworth*, 114 F.3d 601, 611 (6th Cir. 1997).

Dated: September 14, 2016

/s/ Robert J. Jonker

ROBERT J. JONKER

CHIEF UNITED STATES DISTRICT JUDGE